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Forty-fourth session

SUMMARY RECORD OF THE 1144th MEETING

Held at Headquarters, New York,
on Wednesday, 8 April 1992, at 10 a.m.

Chairman: Mr. POCAR

later: Mr. AGUILAR (Vice-Chairman)

later: Mr. POCAR (Chairman)

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The meeting was called to order at 10.35 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Third periodic report of Yugoslavia (CCPR/C/52/Add.9)

1. At the invitation of the Chairman, Mr. Mitic, Mr. Djokic, Mr. Strugar and Mr. Zupanjevac (Yugoslavia) took places at the Committee table.

2. Mr. MITIC (Yugoslavia) said that the difficulties currently experienced by Yugoslavia adversely affected the implementation of human rights provisions, and in some parts of the country even the fundamental human right to life was under threat.

3. Although Yugoslavia had not always been governed fully in accordance with the rule of law, it had nevertheless set an example to the other so-called socialist countries in the observance of human rights at both international and national levels and had followed a relatively liberal concept of human rights. Yugoslavia had initiated the drafting of the declaration on the rights of persons belonging to national, ethnic, religious and linguistic minorities and had contributed to the codification of other important rights. The observance of human rights in Yugoslavia had been assisted by its system of constitutional courts, through which thousands of private citizens had been able to challenge the legality of certain general provisions in Yugoslav law, which had subsequently been declared null and void.

4. Fundamental changes had been made to the constitutional and legal systems of the Yugoslav Federation during the reporting period which were conducive to the introduction of the multi-party system and market economy and to the full implementation of European standards in the field of human rights. Those changes included the explicit prohibition of discrimination on the basis of political belief and the repeal of various other provisions of a discriminatory nature, thereby enhancing conditions for the exercise and protection of human rights.

5. Problems in the exercise and protection of human rights were due to the erosion of the constitutional and legal system occasioned by the unconstitutional acts of secessionist republics and by the upsurge of nationalism throughout Yugoslavia, leading to outbreaks of national and religious hatred and armed conflicts.

6. According to article 1 of the current Constitution, Yugoslavia was a federal State of voluntarily united nations and their republics. Article 5 of the Constitution stipulated that the territory of Yugoslavia was a single unified whole and that its borders could not be altered without the consent of all the republics and autonomous provinces. Under the provisions of article 206, republican and provincial constitutions could not be contrary to

(Mr. Mitic, Yugoslavia)

the Constitution of Yugoslavia. Precise provisions on the modalities for amending the Constitution of Yugoslavia were laid down in article 398 of the Constitution.

7. The authorities of the Republics of Slovenia and Croatia had violated those constitutional provisions through their unilateral decisions to proclaim independence and secede from Yugoslavia. Those unilateral acts had been reviewed by the Federation's highest legislative authorities, namely, the Federal Chamber of the Assembly of the Socialist Federal Republic of Yugoslavia, which had declared that it recognized neither the internal nor the international legitimacy of the decision by the Assembly of Slovenia to secede and had invited that Assembly to enter into dialogue on the regulation of relations; the Government of Yugoslavia had declared those acts illegal and unlawful and their consequences invalid, while reaffirming the right of each nation to self-determination, provided that it was not exercised in a manner contrary to the principles of democracy; the Presidency of Yugoslavia, which had declared those acts unconstitutional and unlawful; and the Constitutional Court of Yugoslavia, which had proclaimed those acts unconstitutional, since the right of nations to self-determination, including the right to secession, required the regulation of issues and procedures which affected not only the republic in question, but all the constituent republics of Yugoslavia as their common State.

8. Those acts of secession ignored two particularly sensitive questions: the rights of other peoples to self-determination, which were threatened by such acts, and the status of the borders of the republics concerned. The population of Yugoslavia and its constituent republics was multinational in composition, and the secession of certain republics could cause members of the same constituent nation, currently citizens of a single State, to become the citizens of different States. In particular, he questioned whether the Republic of Croatia was entitled to force Serbs who had previously lived with their parent nation in a single State, the Federation of Yugoslavia, to become citizens of a separate, independent State. The right to self-determination implied the self-determination of nations, and not of federal Republics.

9. Similarly, the administrative borders between the various Yugoslav republics could not automatically become international State borders as a consequence of the implementation of the right to self-determination of nations. Those borders were not internationally recognized nor based on any internal legal act, but were merely administrative boundaries between parts of a single State.

10. The armed conflict in Slovenia, caused by the forcible take-over by the Slovenian authorities of Yugoslav border-posts and custom services, and the war in Croatia, provoked by the persecution of Serbs, had demonstrated that the use of force and recourse to unconstitutional acts solved nothing and led only to severe human losses and damage to property, while widening the gap between the different peoples and increasing their mutual mistrust.

(Mr. Mitic, Yugoslavia)

11. The withdrawal of Slovenian, Croatian and Macedonian representatives had led to the paralysis of the federal legislative bodies, preventing the adoption of constitutional amendments and of other provisions which required the approval of all republics.

12. He expressed regret that some foreign States had openly supported secession through violence, and had recognized those republics as independent States, in defiance of the conclusion of the European Community that the issue of recognition would be discussed only after the forthcoming Conference on Yugoslavia and contrary to requests by the Secretary-General of the United Nations and his personal representative on Yugoslavia.

13. Despite the severe difficulties in its path, the Yugoslav Government had made every effort to fulfil its international obligations, and it hoped that the Conference on Yugoslavia would resolve the Yugoslav crisis through democratic and peaceful means. The Republics of Montenegro and Serbia, which accounted for half the territory and population of the Yugoslav Federation, had been trying, in cooperation with the federal authorities, to redefine a new federation of Yugoslavia, open to all other Yugoslav peoples and republics wishing to accede to it. Alongside the Conference on Yugoslavia, preparations were under way for the holding of new federal elections and the adoption of a new constitution, modelled on the constitutions of 27 democratic countries. In 1991, as an interim measure, the Yugoslav parliament, acting in accordance with the current, amended constitution, had set up a Special Standing Committee on the rights and freedoms of the individual and citizen, to ensure that human rights formed one of the basic elements of any new constitutional and legal system.

14. The rights of national minorities had been particularly adversely affected by the deterioration of the situation in Yugoslavia and by failure to implement the rule of law. Yugoslavia could not, however, be considered as a bad example in the field of minority rights, since its achievements in that area had far exceeded world and European standards. Under the 1974 Constitution, national minorities enjoyed more extensive rights than those enjoyed by national minorities anywhere else in the world. Even when the Constitution of the Republic of Serbia had revoked some of the authority which made the autonomous provinces of Vojvodina and Kosovo de facto States, none of the minority rights had been modified or reduced.

15. Subsequent to those measures, ethnic Albanians, acting in violation of the constitutions of Yugoslavia and the Republic of Serbia, had declared the so-called Republic of Kosovo. The Assembly of the Republic of Serbia had responded by temporarily suspending the Assembly of the Socialist Autonomous Province of Kosovo and adopting a number of other measures designed to protect territorial integrity and constitutional order of the Republic of Serbia. The implementation of those measures had had a somewhat negative impact on the ethnic Albanians in that province and had resulted in abuses. Those guilty of such abuses had been brought to justice and amendments had been proposed by

(Mr. Mitic, Yugoslavia)

the Ministry of Justice of the Republic of Serbia to the relevant regulations and their enforcement rules.

16. With reference to the complaints that several thousand ethnic Albanians had been dismissed from their jobs on the grounds of political activity, he pointed out that those workers had failed to report to work for several weeks for reasons probably due to a political boycott, and he believed that such absence would be considered sufficient reason for dismissal in any country. In view of the large numbers involved, the Government of the Republic of Serbia had initiated a dialogue with the Union of Independent Trade Unions of Kosovo, in order to resolve the problem.

17. The boycott of elections to the Assembly of the Republic of Serbia by the Albanian majority, as well as their refusal to participate in the 1991 census, had ultimately injured the Albanian minority itself. The unsatisfactory situation in Kosovo could only be resolved if two conditions were fulfilled, namely, the holding of democratic and multi-party parliamentary elections to choose deputies from the Autonomous Province of Kosovo and the recognition of the sovereignty and integrity of the Republic of Serbia as the State in which those Albanians lived.

18. The point at issue was whether a national minority had the right to self-determination, including secession, in other words, the right to establish its own State. In accordance with existing international instruments, including those of the Conference on Security and Cooperation in Europe (CSCE), the Governments of Yugoslavia and the Republic of Serbia believed that national minorities did not have the right to self-determination and secession. That right was not recognized by any country in the world and it was therefore unrealistic to expect such recognition from the Governments of Yugoslavia and of Serbia. Furthermore, the majority of the population in the Republic of Serbia strongly opposed the establishment of a new Albanian State in their own territory.

19. The Governments of Yugoslavia and of Serbia were, however, determined to protect the rights enjoyed by minorities under international instruments and were endeavouring, to that end, to establish dialogue with representatives of the political parties representing the ethnic Albanians. He stressed that the question of self-determination of national minorities required a clear answer, since conflicting interpretations of the question could have fatal consequences for Yugoslavia and other countries as well. In the search for a solution, the Governments of Yugoslavia and its constituent republics had received numerous organizations and individuals concerned with issues of human and minority rights, for the purposes of exchanging views and sharing experiences in that field.

Constitutional and legal framework within which the Covenant is implemented; state of emergency and self-determination (articles 1 (1), 2 and 4 of the Covenant) (section I of the list of issues)

20. The CHAIRMAN read out section I of the list of issues concerning the third periodic report of Yugoslavia, namely: (a) the effect of the current crisis on the constitutional order in Yugoslavia and on the discharge of Yugoslavia's international obligations to respect and to ensure to all individuals subject to its jurisdiction the rights recognized in the Covenant; (b) the status of the amendments to the Federal Constitution adopted since November 1988 and the adoption of new Constitutions for the so-called "federal units"; (c) the observance of article 1 of the Covenant, particularly in view of the adoption of amendments establishing federal units as well as sovereign States which seemed to imply that mutual relations in Yugoslavia must proceed along new lines and that its internationally recognized status had changed, and the new legal system resulting from that redistribution of power; (d) the rights which had been derogated from during the recent events, the reasons why Yugoslavia had not declared a state of emergency and had not followed the notification procedure laid down in article 4, paragraph 3, of the Covenant; (e) the safeguards and remedies available to individuals affected by the recent military operations; (f) the impact of the state of emergency in Kosovo on the exercise of the rights guaranteed by the Covenant, in particular with regard to safeguards and remedies available to individuals; and (g) the ratification of the Optional Protocol, signed by the Government on 14 March 1990.

21. Mr. MITIC (Yugoslavia) said, with reference to section I (a), that the Yugoslav Government was no longer in control of the whole territory of the country. Some of the secessionist republics had been recognized by as many as 60 foreign States, which posed a serious obstacle to the constitutional resolution of the problem. The Yugoslav Government, which respected the right to self-determination and the realities of the situation, was endeavouring to cooperate with those republics in finding a solution to problems of day-to-day existence, which included human rights issues affecting persons on those republics or persons from those republics currently residing in other parts of Yugoslavia. The readiness of the Yugoslav Government to discharge its international obligations was demonstrated by its recognition of guarantees for the World Bank debts of all the republics, including Slovenia and Croatia. Thus, while the Yugoslav Government did not recognize the secession of the breakaway republics, it was prepared to face realities and to seek ways of solving the problem.

22. The question of the independence of Bosnia, Herzegovina and Macedonia should, in accordance with the decision of the European Community, be deferred until after the Conference on Yugoslavia. With reference to section I (b), he said that some of the amendments to the 1988 Constitution had been accepted by all the constituent republics, but about 50 amendments had not been adopted by all the republican Assemblies, and were therefore not yet in force. As there were no representatives of Croatia, Slovenia, Macedonia or Bosnia-Herzegovina in the current national parliament, he doubted whether that goal could now be achieved.

(Mr. Mitic, Yugoslavia)

23. The 1974 Constitution had provided for a single Yugoslav community with many confederative elements. The adoption of decisions had required the consent of all the republics and provinces; that was where conflicts had originated. A new draft Constitution had recently been prepared by a group of experts commissioned by the federal Parliament; according to news reports, it envisaged a close federation along the lines of the Federal Republic of Germany and embodied human rights concepts similar to those followed by France, Italy, the United Kingdom and the United States. The new Constitution would be open for ratification by all republics wishing to remain in the Yugoslav federation.

24. Referring to section I (d), he said that a state of emergency had been declared in Kosovo in 1981 and had been lifted in 1989; in each case, the Secretary-General had been notified. The only other measure involving derogation from the rights guaranteed in the Covenant was a restriction on the right to travel abroad of young men aged 18 to 60 who were liable for military service.

25. With regard to section I (e), the Yugoslav federal army had made efforts to safeguard the rights of individuals. Many instances had been documented of genocidal acts committed by Croatian military and paramilitary units against the Serbian population in Croatia; materials on that subject would be provided to the Committee. His Government was prepared to punish all those responsible for crimes against civilians; some 30 persons had already been detained, and a special commission had recently been established to investigate all reported violations of international humanitarian law, regardless of the nationality of the victims.

26. With regard to section I (f), while judicial remedies offered the best protection, it was not always possible, in a climate of inter-ethnic and inter-religious hatreds, to pursue all individuals suspected of having committed crimes.

27. Turning to section I (g), he said that his Government had submitted to Parliament a proposal to ratify the First Optional Protocol and to make the declaration provided for in article 41 of the Covenant; a decision in that regard was pending.

28. Mr. SERRANO CALDERA said that the situation in Yugoslavia was one of extreme complexity, involving a welter of ethnic, political and judicial issues, the solution to which went beyond merely guaranteeing the rights embodied in the Covenant.

29. His main concern related to the constitutional legal system and the real capacity of the Government to protect civil and political rights. To be sure, such rights were embodied in the federal Constitution; however, the enactments of the sovereign federal units often conflicted with the provisions of the Constitution, as outlined in paragraphs 29 to 33 of the report. He would

(Mr. Serrano Caldera)

therefore appreciate additional information on the real effect of the decisions taken by the Constitutional Court in a situation of civil war such as currently prevailed in the country, and on any measures which had been adopted to protect the rights embodied in the Covenant. Further details should also be provided on the status of the Covenant itself and on whether the new laws promulgated by the federal units contained any references to the Covenant.

30. Mr. HERNDL said that although the federal Constitution endorsed the right of all nations to self-determination, that right was not genuinely observed by the federal Government in respect of the current secessionist tendencies.

31. The issue of self-determination had a bearing on the territorial application of the International Covenants. While the Covenants applied to the entire territory of Yugoslavia, the federal Government was no longer in a position to ensure full compliance with their provisions throughout the country. However, the Government was responsible for the actions of its troops wherever they operated, although it could not be responsible for all acts committed by individuals.

32. Drawing attention to paragraph 4 of the report, he said that it implicitly acknowledged that, prior to the introduction of the new constitutional changes, the protection of the freedoms and rights of citizens had fallen below internationally recognized standards.

33. Mr. Aguilar took the Chair.

34. Mr. FODOR said it was commendable that the State party had prepared and submitted its third periodic report as requested by the Committee, despite the crisis occurring in the country. Nevertheless, the quality of the report was less than satisfactory. The report should have covered the entire reporting period, which should have been broken down into several subperiods. For the first subperiod, from the presentation of the first periodic report in 1983 to the declarations of sovereignty in 1990, the Government should have reported on the practical measures adopted to improve the implementation of the Covenant. In the second subperiod, from the declarations of sovereignty to the outbreak of armed conflict, information should have been provided on the efforts made by the authorities to find peaceful solutions, once Croatia and Slovenia had made clear their determination to attain full independence. With regard to the third subperiod, from June 1991 to January 1992, the Committee had received numerous reports from third parties of extremely grave violations of civil and political rights; however, the State party was mainly silent on those issues and had referred to them only in a general way in paragraphs 82 and 83 of its report. Detailed information should have been provided on the gross violations of articles 6 to 10, 12 and 14 of the Covenant, among others.

(Mr. Fodor)

35. The final subperiod would have been the interval following the introduction of the United Nations-sponsored cease-fire and the report should have contained reference to a strategy designed to achieve a peaceful and lasting solution to the crisis and a prospective constitutional framework for the future implementation of the Covenant.

36. He noted that much of the information contained in the report referred to proposed draft amendments to the federal Constitution. Given that the geographical scope of the Constitution was now severely limited and that its provisions were without effect in a considerable part of the country, he felt that such an approach was highly anachronistic.

37. With regard to article 1 of the Covenant, he noted that the report listed the measures taken by the various federal units to achieve full independence and sovereignty, but failed to mention the autonomous provinces, especially Kosovo, which had made great efforts to exercise the right to self-determination and to establish an independent republic. The parliament of Kosovo had adopted a Constitution and declared the province an independent republic, a measure which had been overwhelmingly endorsed by a popular vote. He also wanted to know what position the Republic of Serbia would adopt regarding the future status of the autonomous provinces of Kosovo and Vojvodina within the new federation and whether their consent would be sought.

38. He noted that, according to paragraph 25 of the report, federal bodies were being prevented from carrying out their tasks and duties related to the implementation of their obligations in the area of the rights and freedoms of citizens. He wondered whether such bodies could still be considered genuine federal organs, or whether they represented only the interests of Serbia and Montenegro.

39. Paragraph 81 of the report appeared to be saying that there was a direct cause and effect relationship between the process of political pluralism and the deterioration in the human rights situation in Yugoslavia. He would welcome clarification of the meaning of that statement.

40. Paragraph 34 of the report maintained that all the measures taken in connection with the state of emergency in Kosovo had been in accordance with the provisions of article 4 of the Covenant. However, article 4 specified that such measures should be taken only during a public emergency, which should be officially proclaimed. In addition, article 317 of the Constitution stipulated that a state of emergency must be declared by the Presidency of the Federal Republic and that rights could be suspended only by a decree with force of law. According to paragraph 36 of the report, however, one of the competent bodies involved in the decision had been the Government of Kosovo. He felt that an explanation was needed. He also wanted to know what rights other than those protected by articles 12 and 21 had been suspended during the declared state of emergency and what rights had been derogated from in practice when no state of emergency was in force in Kosovo.

(Mr. Fodor)

41. Finally, he asked how the Government could reconcile the measures taken against Albanians in Kosovo during the state of emergency - such as the dismissal of teachers and lawyers and the closure of Albanian schools - with the provisions of article 4, paragraph 1, of the Covenant relating to discrimination solely on the ground of race.

42. Mr. Pocar resumed the Chair.

43. Mr. EL-SHAFEI said that the strong desire for secession shown by units of the previous federal State had raised the question of the right to self-determination and whether that right was limited to the national level or could be applied to local or internal situations. It was clear from the report that the viewpoint of the federal Government was that the provisions of the federal Constitution should have been respected and the matter settled between the various political entities of the federation. It felt that the right to self-determination had been exercised in a way that was contrary to the provisions of the Constitution and therefore illegal. Other parties undoubtedly took a different view of the matter.

44. The concern of the Committee, however, was to determine the extent to which the federal Government had observed the rights and freedoms provided for under the Covenant during the events in question. Clearly there had been many breaches and excesses by all parties, but the Committee's concern was with the federal Government of Yugoslavia and its responsibility as a State party to the Covenant, and pertinent questions must therefore be asked. In connection with the use of the federal army to quell the riots in Kosovo, for example, he wanted to know whether the Government had observed all its obligations concerning the use of force and the avoidance of the use of fire-arms other than in exceptional circumstances, and whether it had used its authority to control the actions of the federal army.

45. The third periodic report described a situation which had been overtaken by events, in that certain political entities had been granted recognition by a number of States. According to the representative of Yugoslavia, a new draft Constitution was being drawn up for submission to other political entities interested in joining the new State. He would welcome further information as to what exactly those political entities were.

46. Mr. MAVROMMATIS said that the report was as good as could be expected under the circumstances, given that the federal Government was frequently unaware of what was happening in the areas affected by civil strife.

47. He wanted to know whether the Republics of Croatia and Slovenia had said whether they considered themselves bound by the provisions of international instruments such as the Covenant. He asked for information on the measures taken by the federal Government to protect ethnic and national minorities in Kosovo and in the main cities, and called for more details concerning articles derogated from during the state of emergency.

(Mr. Mavrommatis)

48. He welcomed the investigation of atrocities committed by the Serbian army and paramilitary units but said that it was generally felt that the lack of proper government control over the army had contributed to the deteriorating situation and helped accelerate the disintegration of the country. On occasion, efforts to achieve a cease-fire had been frustrated by the army's failure to comply with government orders. He wanted to know what future measures were planned to keep the army under full control.

49. He failed to understand why a series of notifications had not been given under article 4 of the Covenant in connection with the inter-ethnic fighting in Kosovo and elsewhere. He asked what emergency measures had been taken in Serbia and Montenegro to protect minorities and whether they were still in force.

50. Mr. MÜLLERSON said that, while the Covenant applied to the entire territory of Yugoslavia, the Government of Yugoslavia could protect civil and political rights only in Serbia and Montenegro, since it did not control the rest of the country, either de jure or de facto. In that respect, he wished to know the status of the Covenant in the republics that had chosen to leave the Yugoslav federation and establish independent States. Paragraph 18 of the report indicated that, according to the Constitution, Serbia had actually become a fully independent and sovereign State, and he wished to know whether that meant that Serbia would also separate from Yugoslavia.

51. Mr. WENNERGREN said that, according to paragraphs 16 and 17 of the report, Slovenia and Croatia had seceded from the Yugoslav federation but had not seceded from the federation's legal system. Both Slovenia and Croatia recognized federal laws that were not contrary to their Constitutions. He wondered whether the Covenant would remain in force when Slovenia and Croatia enacted their own laws and the federal laws ceased to have effect in the two Republics. It seemed that, if the Covenant was to continue to have effect in Slovenia and Croatia, they would have to accede to it as separate States parties.

52. Mr. PRADO VALLEJO said that the right to self-determination was inalienable and could not be renounced. Any attempt to prevent it would be a violation of the Covenant. He therefore requested the Yugoslav delegation to clarify paragraph 20 (d) of the report which stated that "the issue of the exercise of the right of nations to self-determination and to secession" concerned "not only one but all the nations within the Socialist Federal Republic of Yugoslavia". That statement was completely contrary to the right to self-determination. Moreover, paragraph 21 stated that "the exercise of the right to self-determination, including the right to secession," could not "be regulated unilaterally by the assemblies of the federal units exercising that right", and he inquired how it was possible to prevent a federal unit from exercising that basic right.

(Mr. Prado Vallejo)

53. He requested the Yugoslav delegation to comment on the effect of the decree suspending the enforcement of individual acts and measures taken pursuant to articles 4 and 10 of the Law on the Plebiscite on the Autonomy and Independence of the Republic of Slovenia, referred to in paragraph 21 (b) of the report.

54. He wished to know what measures the Government of Yugoslavia had taken to ensure that the provisions of the Covenant were being applied in Serbia and Montenegro. The federal armed forces had been accused of blatant violations of human rights, including the right to life, and he wished to know whether any investigatory body had been established to ensure that the army complied with the Covenant. He asked whether any member or members of the armed forces had been found guilty of human rights violations.

55. The Yugoslav delegation should indicate how the Government of Yugoslavia was cooperating to ensure the effectiveness of the cease-fire. Perhaps the delegation would be able to send additional information to the Committee.

56. Mr. SADI said that he assumed that the federal authorities did not deny the right of Croatia and Slovenia to self-determination as long as that right was exercised in accordance with the Constitution. In that regard, he wondered whether the Constitution actually permitted the two Republics to assert their self-determination. The Yugoslav delegation should explain what constituted a minority, which did not have the right to self-determination, and what constituted a people, which did.

57. He was particularly concerned about human rights violations by the federal Government, which should be subject to a higher degree of supervision and should observe higher standards than the breakaway republics. He inquired whether the Government of Yugoslavia was in a position to investigate all of the human rights violations reported by Amnesty International and whether it would be able to provide the Committee with the results of the investigations, which should include information on any measures taken to punish the guilty parties.

The meeting rose at 1 p.m.